STATE OF VERMONT

HUMAN SERVICES BOARD

In re   ) Fair Hearing No. H-08/09-437
)
Appeal of   )

INTRODUCTION

The petitioner appeals the decisions by the Department for Children and Families, Economic Services Division establishing overpayments of Food Stamps and Reach Up Financial Assistance (RUFA). The issue is whether the Department can assess an overpayment amount if the recipient is not at fault for the overpayment. The following facts are based on the petitioner's representations at the hearing in this matter held on October 8, 2009.[1]

FINDINGS OF FACT

1. From February 1, 2009 through May 31, 2008 the petitioner received Food Stamps and RUFA as the "head of household" consisting of herself, her husband, and their infant child. The amounts of her grants were based solely on the family's income during this period.

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[1] Due to a miscommunication from the hearing officer, the Department's attorney did not participate in the hearing.

2.   The petitioner alleges that she timely reported to the Department that in February 2009 her husband had received a lump sum settlement award of over $200,000. The petitioner maintains that after payment of legal expenses and outstanding debts only about $70,000 of this money remains. The petitioner represents that all of this money has been placed in Certificates of Deposit (CDs), with penalties for early withdrawal. She maintains that she and her husband intend to use this money primarily for educational purposes.

3.   There is no dispute that the petitioner received a total of $2,335 in Food Stamps and $2,172 in RUFA that she would not have been eligible for had the Department correctly counted the resources of all the required household members during this period.

4.   The petitioner maintains, however, that she should not be held liable for any amount of overpayment due to the Department's alleged "error" in causing it, and the fact that it has been placed in CDs, with penalties for early withdrawal, and with the intent to use it for educational purposes.

5.   The Department maintains that the petitioner did not report her receipt of the lump sum until May 2009, but, as discussed below, this is a moot point.

ORDER

The Department's decisions are affirmed.

REASONS

There is no question in this matter that as of February 2009 the petitioner's family's resources have been in excess of the respective Food Stamp and RUFA program maximums of $2,000. W.A.M §§ 273.8(b) & 2281. Neither program exempts CDs from consideration as resources, regardless of the family's intended use for the money. Id. §§ 273.8(c) & 2280.

Under the Food Stamp regulations, the Department is required to "establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive." Id. § 273.18(a). Even if the overpayment can be determined to have been the Department's fault, the regulations provide: "A claim shall be handled as an administrative error claim if the over issuance was caused by State agency action or failure to take action . . ." § 273.18(a)(2). The Department is required to "take action to establish a claim against any household that received an over issuance due to an . . . administrative error if . . . [a] state agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment"

so long as not more than twelve months have elapsed between
the month the over issuance occurred and the month the state
agency discovered the error. § 273.18(b)(2)(ii). If
administrative error occurred, the size of the Department's
claim must equal the difference between what the household
should have received and what the household was actually
allotted. § 273.18(c)(1)(ii).

Similarly, the RUFA regulations provide that
"overpayments of assistance, whether resulting from
administrative error (or) client error . . .shall be subject
to recoupment." Id. § 2225.

Inasmuch as the Department's decisions in this matter
are clearly in accord with the above regulations, the Board
is bound by law to affirm. 3 V.S.A. § 3091(d), Fair Hearing
Rule No. 1000.4D.

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